

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON,)	
)	
Plaintiff)	
)	
v.)	
)	Civil Action No. 04-135 Erie
LARRY E. KOPKO, RANDY J. ICKERT)	
and KATIE L. AVENALI,)	
)	
Defendants)	Jury Trial Demanded

DEFENDANT'S PRETRIAL STATEMENT

Defendant Katie L. Smith, née Katie L. Avenali, respectfully submits the following Defendant's Pretrial Statement.

Facts

On February 4, 2004 at approximately 12:36 p.m. plaintiff Josh L. Anderson was an inmate in the Warren County Jail, located in Warren, Pennsylvania, at which time he was housed in the maximum security unit of that institution. Correctional Officers Stephen Breon, Jerry Dipenti and Katie L. Smith (then named Katie L. Avenali), accompanied by inmate trustees, were in the process of serving the noon meal to the inmates. Earlier that morning Inmate Anderson told Officer Breon that if Officer Smith came into the maximum security unit of the jail that day he, Inmate Anderson, would assault her. As Officers Breon and Dipenti were entering the maximum security unit at approximately 12:36 p.m. Inmate Anderson twice attempted to push past Officers Breon and Dipenti to reach Officer Smith, who was outside the maximum security unit. Each time Inmate Anderson was pushed backwardly by Officers Breon and Dipenti; as

Inmate Anderson was pushed backwardly the second time, he was warned by Officer Dipenti that if he tried to get by a third time, they would "put him down."

Inmate Anderson tried a third time to get by Officers Breon and Dipenti, who grabbed him and physically forced him to the floor. Officer Smith radioed all correctional officers on duty in the Warren County Jail at that time to provide assistance and she entered the maximum security unit to assist Officers Breon and Dipenti: Officer Smith held Inmate Anderson's legs and handcuffed him while Officers Breon and Dipenti held down Inmate Anderson.

Sergeant Robert Burns and Correctional Officers Mark Lehnert and Kellie Curtis responded to the radio call made by Officer Smith. Sergeant Burns ordered Inmate Anderson placed in a jail cell known as the detoxification cell ("detox") and Officer Breon left the area and went to detox to prepare it for Inmate Anderson's arrival. Officers Dipenti and Lehnert raised Inmate Anderson into a sitting position; after attaining a sitting position Inmate Anderson called Officer Smith vulgar names and spit in her face, some of the spit landing on her face and some in her left eye. Officer Smith then grasped Inmate Anderson's head and turned it away from her while Officers Dipenti and Lehnert rolled Inmate Anderson into a prostrate position.

Officer Smith left the area to clean her face and eye, concerned about the risk to her health that her exposure to Inmate Anderson's body fluid presented. Inmate Anderson repeatedly laughed wildly and hollered that he "scared" Officer Smith and that she was "scared of" him. Inmate Anderson's shoes were removed and he was escorted to "detox" by Officers Breon, Dipenti and Lehnert, who physically grasped him and led him to detox. They were accompanied by Sergeant Burns, and by Captain Randolph Ickert, who also responded to Officer Smith's radio call.

After they arrived at detox Inmate Anderson's clothes were removed and replaced with a suicide smock, whose appearance is similar to a hospital gown and which is physically resistant to cutting, tearing and burning; he remained handcuffed. After the officers left "detox" Inmate Anderson repeatedly struck his head against a metal portion of his bed, resulting in two lacerations to his forehead.

After Inmate Anderson stood on the toilet in detox and threatened to jump off head first on to the floor of the cell, Sergeant Burns contacted William Schultz, M.D., the physician to the Warren County Jail, and received his permission to apply soft restraints to Inmate Anderson. Sergeant Burns led a team of four officers to detox and applied a helmet and soft restraints to Inmate Anderson. While they were placing these safety garments on Inmate Anderson, Inmate Anderson unsuccessfully attempted to kick Sergeant Burns in the face.

Inmate Anderson was examined by Dr. Schultz on the evening of February 5, 2004. The forehead lacerations were observed but were not closed by Dr. Schultz or at his direction because of the probability based on past experience with Inmate Anderson that he would open self-inflicted wounds that had been medically closed. Inmate Anderson did not complain of any other injuries to his head, including his face, nor did he provide a medical history to Dr. Schultz that was consistent with any injuries other than the self-inflicted forehead lacerations, and Dr. Schultz did not observe any injuries other than the forehead lacerations.

Inmate Anderson was incarcerated in the Warren County Jail from June 6, 2001 to May 19, 2003, from October 7, 2003 to June 25, 2004, from June 28, 2004 to July 1, 2004, from August 2, 2004 to August 6, 2004, from September 15, 2004 to September 24, 2004, from October 29, 2004 to November 2, 2004 from November 16, 2004 to November 19, 2004 and from November 2, 2005 to November 4, 2005. The attempted assault on Officer Smith by

Inmate Anderson on February 4, 2004, his false allegation that Officer Smith assaulted him on that date and his filing this lawsuit are several of many acts of retaliation by Inmate Anderson directed toward Officer Smith for her refusal to provide personal information regarding herself requested by Inmate Anderson, for her not acting as a counselor to him regarding relationship problems he was experiencing with another woman, for her not interviewing him in the course of an investigation she was conducting and for otherwise not acceding to demands he made concerning the conduct of her duties as a correctional officer at Warren County Jail. Those acts of retaliation have included false accusations of improper conduct in the performance of her duties as a correctional officer, calling her abusive and vulgar names, threats to burn her house down, threats to rape her, threats to murder, or arrange the murder of, members of her family and her, and threats to abuse her body after she was murdered.

Witnesses

1. Josh L. Anderson
Coal Township, PA 17866-1021
2. Stephen Breon
Warren, PA 16365-1763
3. Robert Burns
Edinboro, PA 16444
4. Joshua Carpenter
Warren, PA 16365-1763
5. Kellie Curtis
Warren, PA 16365-1763
6. Jerry Dipenti
Bradford, PA 16701
- 7.. Jane Farnsworth
Warren, PA 16365-1763

8. Lonnie Heeter
Warren, PA 16365
9. Randolph J. Ickert
Warren, PA 16365-1763
10. Dennis Kelley
Warren, PA 16365-1763
11. Kenneth Klakamp
Warren, PA 16365-1763
12. Larry E. Kopko
Warren, PA 16365-1763
13. Benjamin Kraft
Warren, PA 16365-1763
14. Mark Lehnen
Warren, PA 16365-1763
15. Dawn Radaker
Warren, PA 16365-1763
16. Bodie Rose
Warren, PA 16365-1763
17. Jacob Sack
Warren, PA 16365-1763
18. William Schultz, M.D.
Warren, PA 16365
19. Katie L. Smith
Warren, PA 16365-1763

Exhibits

1. Warren County Jail booking sheets concerning plaintiff and witnesses for plaintiff.
2. National Crime Information Center reports on plaintiff and witnesses for plaintiff.
3. Court records of criminal convictions of plaintiff and witnesses for plaintiff.

4. Warren County Jail logs concerning February 3, 2004 through February 5, 2004.
5. Warren County Sheriff's Office Standard Operating Guidelines.
6. Personal notes of Katie L. Smith concerning statements made by Josh Anderson.
7. 10-3-02 Warren County Jail Inmate Request Form from Josh Anderson.
8. Documents relating to investigation of 5-8-03 assault on Inmate Daniel Lester.
9. Documents relating to 10-27-03 and 10-28-03 threats by Josh Anderson toward Katie L. Smith.
10. 10-4-02 letter from Josh Anderson to Katie Smith, received by Katie Smith on 11-1-03.
11. Documents relating to 11-9-03 statements made by Josh Anderson concerning Katie L. Smith.
12. 12-20-03 email from Katie L. Smith regarding comments made by Josh Anderson.
13. 12-25-03 email from Katie L. Smith regarding comments made by Josh Anderson.
14. 1-19-04 email from Robert Burns concerning comments made by Josh Anderson.
15. 1-20-04 email from Katie L. Smith concerning comments made by Josh Anderson.
16. Statements and investigation report relating to 2-4-04 incident in which Josh Anderson attempted to assault Katie L. Smith.
17. 2-5-04 notes concerning medical examination of Josh Anderson.
18. 3-4-04 letter from Josh Anderson to Katie L. Smith.
19. 3-29-04 email from Mark Lehnert regarding statements made by Josh Anderson concerning Katie L. Smith.
20. 10-31-04 letter from Josh Anderson to Sheriff Larry E. Kopko.
21. Documents relating to 8-26-05 request by Josh Anderson concerning Katie L. Smith.

22. Documents relating to separation orders concerning Josh Anderson and Katie L. Smith.
23. Grievances filed with Warren County Jail by Josh Anderson.
24. Object made by Josh Anderson concerning Katie L. Smith comprised of rope tied into a heart-shaped figure with a cross at the bottom of the heart, with Ms. Smith's initials inside the heart.
25. DVD recording of A Block at the Warren County Jail on February 4, 2004.

Unusual Legal Issues

No unusual legal issues have been identified.

Respectfully submitted,

/s/ James T. Marnen

James T. Marnen

PA ID No. 15858

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Katie L. Smith, née Katie L. Avenali

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of June, 2006, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen
James T. Marnen

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